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Attorneys for Defendants: Fountains at Sea Bright Condominium Association (improperly plead as Sea Bright Condominium Association) and Marc Leckstein

MARILYN JACCARD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Plaintiff (s)

CASE No.: 3:14-CV-07535-AET-DEA

v.

CIVIL ACTION

BANK OF AMERICA, SEA BRIGHT BOROUGH :
POLICE DEPARTMENT; BRETT FRIEDMAN :
in his individual capacity, MARC LECKSTEIN, :
SEA BRIGHT CONDOMINIUM ASSOCIATION, :
INC., SEA BRIGHT CONDOMINIUM :
HOMEOWNER'S ASSOCIATION, McGOVERN :
LEGAL SERVICES, LLC. :
FRANCIS J. McGOVERN, MICHAEL POLULAK :
JENNIFER HILL AND REZKOM ENTERPRISES :
INC.

ANSWER TO COMPLAINT

Defendant(s)

Defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein

by way of Answer to Plaintiff's Complaint, herein say:

PRELIMINARY STATEMENT

1. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph One of the Statement.

JURISDICTION AND VENUE

1. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Two through Six of the Jurisdiction and Venue.

PARTIES

1. The allegations set forth in Paragraphs Seven through Thirteen of the Parties do not relate to defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, and said defendants make no answer thereto. If any of the allegations are deemed to relate to said defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, said allegations are herein expressly denied.

2. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph Fourteen of the Parties.

3. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs Fifteen and Sixteen of the Parties.

4. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph Seventeen of the Parties.

5. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs Eighteen and Nineteen of the Parties.

6. The allegations set forth in Paragraphs Twenty through Twenty-Six of the Parties do not relate to defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, and

said defendants make no answer thereto. If any of the allegations are deemed to relate to said defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, said allegations are herein expressly denied.

FACTUAL ALLEGATIONS

1. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the Factual Allegations as if the same were set forth at length herein.
2. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-Eight through Sixty-Six of the Factual Allegations.
3. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs, Sixty-Seven through Sixty-Eight of the Factual Allegations.
4. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs, Sixty-Nine through Seventy-Seven of the Factual Allegations.
5. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs, Seventy-Eight through Eighty-Three of the Factual Allegations.
6. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs, Eighty-Four through Ninety-Eight of the Factual Allegations.

7. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraph, Ninety-Nine of the Factual Allegations.
8. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph, One Hundred of the Factual Allegations.
9. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraph, One Hundred and One of the Factual Allegations.
10. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph, One Hundred and Two of the Factual Allegations.
11. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraph, One Hundred and Three of the Factual Allegations.
12. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs, One Hundred and Four through One Hundred and Five of the Factual Allegations.
13. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs, One Hundred and Six through One Hundred and Seven of the Factual Allegations.
14. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein are presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs, One Hundred and Eight through One Hundred and Fifteen of the Factual Allegations.

FIRST COUNT

15. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations as set forth at length herein.

16. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Seventeen through One Hundred and Twenty-Three of the First Count.

SECOND COUNT

17. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First Count as if the same were set forth at length herein.

18. The allegations set forth in Paragraphs One Hundred and Twenty-Five through One Hundred and Twenty-Nine do not relate to defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, and said defendants make no answer thereto. If any of the allegations are deemed to relate to said defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, said allegations are herein expressly denied.

THIRD COUNT

19. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First and Second Count as if the same were set forth at length herein.

20. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Thirty-One through One Hundred and Sixty-Six of the Third Count.

FOURTH COUNT

21. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second and Third Count as if the same were set forth at length herein.

22. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Sixty-Eight through One Hundred and Seventy-Three of the Fourth Count.

FIFTH COUNT

23. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second, Third and Fourth Count as if the same were set forth at length herein.

24. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Seventy-five through One Hundred and Eighty-Three of the Fifth Count.

SIXTH COUNT

25. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second, Third, Fourth and Fifth Count as if the same were set forth at length herein.

26. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Eighty-Five through One Hundred and Eighty-Six of the Sixth Count.

SEVENTH COUNT

27. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second, Third, Fourth, Fifth and Sixth Count as if the same were set forth at length herein.

28. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Eighty-Eight through One Hundred and Ninety-One of the Seventh Count.

EIGHTH COUNT

29. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Count as if the same were set forth at length herein.

30. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Ninety-Three through One Hundred and Ninety-Six of the Eighth Count.

NINTH COUNT

31. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein repeat and reiterate their answers to the allegations contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Count as if the same were set forth at length herein.

32. The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of Paragraphs One Hundred and Ninety-Eight through Two Hundred and Four of the Ninth Count.

DAMAGE CLAIMS

1. Defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny that plaintiff is entitled to any damages.

AFFIRMATIVE DEFENSES

1. Any and all injuries and damages sustained were the proximate result of the negligent acts of a third person, natural and corporate, over whom defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein exercised no control and for whose actions defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein is not legally responsible.

2. The damages of the plaintiff, if any, are limited and any recovery, if defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein should be found negligent, is diminished by plaintiff's negligence in failing to exercise due and proper care, which negligence was greater than the negligence of defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein in accordance with the Comparative Negligence Act, N.J.S.A. 2A:15-1.1, et seq.

3. The applicable law, rule, statute or resolution, including, but not limited to, the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the plaintiff and accordingly, the plaintiff's claims are barred as a matter of law.

4. The Complaint herein fails to state a claim upon which relief can be granted and defendants reserves the right to move for dismissal at or prior to trial.

5. The claim is barred by the doctrine of res judicata.

6. The Complaint is barred by reason of the equitable doctrine of laches.

7. All claims are barred by the doctrine of estoppel and waiver.

8. The action is barred based upon this plaintiff's failure to join necessary indispensable parties needed for the adjudication of the matter in controversy.

9. The acts or omissions of defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein were not the legal or proximate cause of the alleged conditions at the site or the resulting damages.

10. The claim is barred based upon the Advice of Counsel defense.

11. Plaintiff's claims are barred by the Master Deed, Rules and Regulations and Bylaws of the condominium association.

12. Plaintiff's claims are barred by the Business Judgment Rule.

13. Defendant, Fountains at Sea Bright Condominium Association and Marc Leckstein, is a non-profit corporation, society or association within the contemplation of N.J.S.A. 2A:53A-7 et seq., and as such defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, is immune from liability to plaintiff.

14. Plaintiff's claims are barred by the New Jersey Condominium Act.

15. Plaintiff's claims are barred because plaintiff lacks standing.

16. Plaintiff's claims are barred pursuant to the New Jersey Non-profit Corporation Act.

17. Plaintiff's claims are barred pursuant to the defenses set forth in 18 U.S.C Sec. 1961, 42 U.S.C Sec. 1981, 1983, 1985, 1986 and 1988, 28 U.S.C Sec. 1391.

20. Plaintiff's claims are barred pursuant to The New Jersey Punitive Damage Act.

21. All defenses set forth in New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2 et seq.

22. The claim is barred by the Entire Controversy Doctrine.

23. Defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein hereby incorporate the affirmative defenses of all other parties to this litigation as if fully set forth herein at length.

12. Defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein reserve the right to amend its Answer to assert all additional applicable defenses which discovery may reveal.

ANSWER TO CROSSCLAIMS

Defendants, defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein by way of Answer to any and all Crossclaims which may be exhibited against defendants, says that defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein deny the allegations of any Crossclaims that Crossclaimants are entitled to the relief sought.

WHEREFORE, defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, demand judgment dismissing any Crossclaim, plus costs.

CROSSCLAIM FOR COMMON LAW INDEMNIFICATION

While not admitting liability herein, defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein assert that if found negligent, such negligence was vicarious, passive and secondary and that it was the negligence of the co-defendants, Bank of America, Sea Bright Borough Police Department; Brett Friedman, (in his individual capacity) McGovern Legal Services, LLC. Francis J. McGovern, Michael Polulak, Jennifer Hill and Rezkom Enterprises, Inc. which was active, primary and the proximate cause of the plaintiff have alleged damages. As such, a demand is made by defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein for common-law or implied indemnification for any judgment and for the reimbursement of all counsel fees and costs incurred in the defense of this matter.

CROSSCLAIM FOR CONTRIBUTION

Without admitting any liability herein, defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, hereby claim contribution against co-defendants, Bank of America, Sea Bright Borough Police Department; Brett Friedman, (in his individual capacity) McGovern Legal Services, LLC. Francis J. McGovern, Michael Polulak, Jennifer Hill and Rezkom Enterprises, Inc. under the Joint Tortfeasor's Contribution Law, N.J.S.A. 2A:53A-1, et seq. and the Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et seq.

CROSSCLAIMS FOR CONTRACTUAL INDEMNIFICATION

While not admitting liability herein defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, contends that should liability be found against defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, seeks indemnification from the co-defendant, Rezkom Enterprises, Inc. pursuant to contractual rights of indemnification including contractually provided for counsel fees and costs of suit.

CROSSCLAIMS FOR INSURANCE

Defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, are entitled to coverage by a policy of insurance which co-defendant, Rezkom Enterprises, Inc. contractually agreed to obtain for the benefit of defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein. Co-defendant Rezkom Enterprises, Inc. breached insurance procurement obligations pursuant to the contract with defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein.

DEMAND FOR A STATEMENT OF DAMAGES

The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, demand a written statement of damages within five (5) days, as provided by the Rules of the Court.

JURY DEMAND

The defendants, Fountains at Sea Bright Condominium Association and Marc Leckstein, demand a trial by jury on all of the issues.

DESIGNATION OF TRIAL COUNSEL

In accordance with the provisions of R. 4:25-4, Timothy P. Burns, Esq. is hereby designated as trial counsel.

CERTIFICATION

I DO HEREBY CERTIFY that to the best of my knowledge this matter is not the subject of any other action pending in any court or arbitration proceeding. To my current knowledge, there are no other parties than those named in this matter that should be joined in this action.

ROBINSON BURNS, LLC
Attorneys for defendants,
Fountains at Sea Bright Condominium Association
and Marc Leckstein

s/Jennifer M. Bruder
JENNIFER M. BRUDER, ESQ.

s/Timothy P. Burns
TIMOTHY P. BURNS, ESQ.

CERTIFICATION OF SERVICE

I hereby certify that the original of the within Answer has been filed with the Clerk of the United States District Court for the District of New Jersey and a copy of the within Answer has been served upon:

Kenneth Rosellini, Esq.
Attorney at Law
636A Van Houten Avenue
Clifton, New Jersey 07013
Attorney for the Plaintiff

ROBINSON BURNS, LLC
Attorneys for defendants,
Fountains at Sea Bright Condominium Association
and Marc Leckstein

s/Jennifer M. Bruder
JENNIFER M. BRUDER, ESQ.

s/Timothy P. Burns
TIMOTHY P. BURNS, ESQ.